IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.458 OF 2007

Saraswat Co-operative Bank Ltd. ..Applicant.

V/s.

Mukesh Gurnani & Ors. ..Respondents.

Mr.P.D.Borkar for applicant.

Ms.M.H.Mhatr, A.P.P. for respondent State.

CORAM : J.H.BHATIA, J.

DATED : 15TH MARCH, 2007.

P.C. :-

Heard Mr.Borkar, learned counsel for the applicant. Perused the relevant documents.

2. This is an application seeking leave to prefer appeal against the order of acquittal passed in favour of the against accused Nos.1 & 2 on the complaint lodged against them under section 138 of the Negotiable Instruments Act. Accordingly, to the applicant / original complainant, cash credit facility was taken by one Kishor Gurnani, who was running the business in the name and style of 'M/s.Varsha Garments'. He had failed to make payments of the dues. According to the applicant, Kishor Gurnani had promised to come to the bank, but he did not turn up.

Respondent No.2 Mukesh handed over a cheque to the complainant with a letter dated 4th October, 2005. The cheque was signed by respondent No.1 Mukesh and respondent No.2 Pradeep and it was for an amount of Rs.5 lakhs. That cheque was dishonoured. on that basis a complaint was lodged under section 138 of the Negotiable Instruments Act against respondent Nos.1 & 2. After hearing the evidence, the trial Court came to the conclusion that there was no existing liability as far as respondent Nos.1 & 2 are concerned and, therefore, merely because the cheque was dishonoured,the offence under section 138 of the Negotiable Instruments Act is not committed.

3. Section 138 of the Negotiable Instruments Act clearly provides that wherein a cheque, drawn by a person for payment of any amount of money to another person for discharge of whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the insufficiency of funds or on the ground that it exceeds the amount arranged to be paid, the person shall be liable to be convicted and punished. The basic requirement is that the cheque should been drawn and issued for discharge of any debt or other liability. In the present case, admittedly, the respondent Nos.1 & 2 had not taken any loan from

the applicant bank nor they were guarantors for the loan advanced to Kishor Gurnani. Therefore, when the cheque was issued by the respondent Nos.1 & 2 in favour of the applicant, there was no debt or liability against them either as a borrower or as a guarantor. In view of this, I find that the trial Court was right in holding that the offence under section 138 of the Negotiable Instruments Act is not made out. There is no merit in the application.

4. Application stands rejected. Leave refused.

(J..H.BHATIA, J.)